

Senate Chamber, Atlanta, Georgia  
Wednesday, February 9, 2005  
Fifteenth Legislative Day

The Senate met pursuant to adjournment at 10:00 a.m. today and was called to order by the President.

Senator Balfour of the 9th reported that the Journal of the previous legislative day had been read and found to be correct.

By unanimous consent, the reading of the Journal was dispensed with.

The Journal was confirmed.

The following message was received from the House through Mr. Rivers, the Clerk thereof:

Mr. President:

The House has passed by the requisite constitutional majority the following Bill of the House:

HB 191. By Representatives O`Neal of the 146th and Williams of the 4th:

A BILL to be entitled an Act to amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to imposition, rate, computation, and exemptions regarding income taxes, so as to provide for adjustments to taxable net income with respect to certain direct or indirect interest expenses and costs and intangible expenses and costs; to provide for procedures, conditions, and limitations; to change the manner and method of allocating and apportioning income with respect to corporations; to provide for powers, duties, and authority of the state revenue commissioner; to provide effective dates; to provide for applicability; to repeal conflicting laws; and for other purposes.

The House has adopted by the requisite constitutional majority the following Resolution of the House:

HR 191. By Representatives Orrock of the 58th, Willard of the 49th, Cooper of the 41st, Wilkinson of the 52nd, Oliver of the 83rd and others:

A RESOLUTION recognizing Health Care Decisions Week in Georgia; and for other purposes.

The following Senate legislation was introduced, read the first time and referred to committee:

SB 146. By Senators Mullis of the 53rd, Pearson of the 51st, Thomas of the 54th, Kemp of the 46th, Hamrick of the 30th and others:

A BILL to be entitled an Act to amend Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to the Georgia Bureau of Investigation, so as to change a definition; to change the title of the director; to change certain provisions concerning authorizing the Antiterrorism Task Force to share information and work with other agencies; to amend Code Section 25-2-33 of the Official Code of Georgia Annotated, relating to release of fire loss information by insurers on request by state official, and Code Section 45-7-7 of the Official Code of Georgia Annotated, relating to compensation and allowances of certain officials not be changed without giving public notice, so as to correct the title of the director of the Georgia Bureau of Investigation; to repeal conflicting laws; and for other purposes.

Referred to the Public Safety and Homeland Security Committee.

SB 147. By Senator Shafer of the 48th:

A BILL to be entitled an Act to amend Part 8 of Article 8 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated, relating to liens of hospitals and nursing homes, so as to allow a chiropractic practice to have a lien on a cause of action accruing to an injured person for the costs of care and treatment arising out of the cause of action; to define a term; to change certain provisions regarding notice; to provide for related matters relative to filing a lien; to repeal conflicting laws; and for other purposes.

Referred to the Special Judiciary Committee.

SB 148. By Senators Butler of the 55th, Miles of the 43rd, Fort of the 39th, Tate of the 38th, Henson of the 41st and others:

A BILL to be entitled an Act to amend Chapter 1 of Title 40 of the Official Code of Georgia Annotated, relating to general provisions relative to motor vehicles and traffic, so as to require policies that prohibit law enforcement officers from impermissibly using race or ethnicity in determining whether to stop a motorist; to require annual training of law enforcement officers on

impermissible uses of race and ethnicity in stopping vehicles; to require law enforcement officers to document the race, ethnicity, and gender of a motorist and passengers; to provide for other matters relative thereto; to repeal conflicting laws; and for other purposes.

Referred to the Public Safety and Homeland Security Committee.

SB 149. By Senators Hudgens of the 47th, Schaefer of the 50th, Heath of the 31st, Cagle of the 49th, Mullis of the 53rd and others:

A BILL to be entitled an Act to amend Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to elementary and secondary education, so as to provide for adoption of policies and procedures by local boards of education to provide information regarding school sponsored clubs and extracurricular activities to parents and legal guardians and to provide an opportunity to withhold permission to participate; to provide that local school systems shall comply with written notification from parents and legal guardians withholding permission for participation; to require written parental or legal guardian permission for membership in a specific club or activity; to require annual permission for club membership and participation in activities; to provide for related matters; to repeal conflicting laws; and for other purposes.

Referred to the Education and Youth Committee.

SB 150. By Senators Zamarripa of the 36th, Williams of the 19th, Reed of the 35th, Moody of the 56th, Adelman of the 42nd and others:

A BILL to be entitled an Act to provide a short title; to amend Part 1 of Article 2 of Chapter 10 of Title 32 of the Official Code of Georgia Annotated, relating to general provisions relative to the State Road and Tollway Authority, so as to provide that the authority shall implement a program to provide for the development and expansion of streetcar transportation and attendant economic and community development opportunities; to provide for related matters; to provide an effective date; to repeal a specific law; to repeal conflicting laws; and for other purposes.

Referred to the Transportation Committee.

SB 151. By Senators Kemp of the 46th, Meyer von Bremen of the 12th, Thomas of the 2nd, Mullis of the 53rd, Thomas of the 54th and others:

A BILL to be entitled an Act to amend Code Section 35-8-3 of the Official Code of Georgia Annotated, relating to establishment of the Georgia Peace

Officer Standards and Training Council, so as to change the provisions relating to membership of said council; to provide for related matters; to repeal conflicting laws; and for other purposes.

Referred to the Public Safety and Homeland Security Committee.

SB 152. By Senators Heath of the 31st, Grant of the 25th, Staton of the 18th, Unterman of the 45th, Williams of the 19th and others:

A BILL to be entitled an Act to amend Part 2 of Article 1 of Chapter 2 of Title 8 of the Official Code of Georgia Annotated, relating to state building, plumbing, electrical, and other codes, so as to provide for the security of certain records; to amend Article 4 of Chapter 18 of Title 50 of the Official Code of Georgia Annotated, relating to inspection of public records, so as to provide that certain engineering and construction drawings, plans, and critical data shall not be subject to public disclosure; to repeal conflicting laws; and for other purposes

Referred to the Public Safety and Homeland Security Committee.

SB 153. By Senators Adelman of the 42nd, Harp of the 29th, Moody of the 56th, Powell of the 23rd, Hamrick of the 30th and others:

A BILL to be entitled an Act to amend Code Section 50-18-70 of the Official Code of Georgia Annotated, relating to inspection of public records, so as to make the records of educational facilities that employ campus policemen and that relate to such police duties, activities, and functions open to inspection in the same manner as other records of public agencies; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

Referred to the Judiciary Committee.

SB 154. By Senators Shafer of the 48th, Fort of the 39th, Hill of the 4th, Meyer von Bremen of the 12th, Cagle of the 49th and others:

A BILL to be entitled an Act to amend Chapter 1 of Title 50 of the Official Code of Georgia Annotated, relating to general provisions concerning state government, so to provide that no state agency or state officer shall accept or utilize certain grants or funds except under certain conditions; to provide an effective date; to repeal conflicting laws; and for other purposes.

Referred to the Appropriations Committee.

- SB 155. By Senators Tolleson of the 20th, Whitehead, Sr. of the 24th, Cagle of the 49th, Johnson of the 1st, Starr of the 44th and others:

A BILL to be entitled an Act to amend provisions of the O.C.G.A. relating to recreational vehicles; to amend Part 1 of Article 22 of Chapter 1 of Title 10 of the O.C.G.A., relating to general considerations regarding motor vehicle franchises, so as to exempt recreational vehicles from the definition of motor vehicle; to amend Chapter 1 of Title 10 of the O.C.G.A., relating to selling and other trade practices, so as to provide for definitions; to provide purposes and policies to protect recreational vehicle dealers; to provide for sales areas; to provide for changing or terminating sales areas only for good cause; to provide for notice of termination or substantial change to a sales area; to provide for repurchase of inventories by the grantor upon termination of a dealership; to provide for applicability; to provide for related matters; to repeal conflicting laws; and for other purposes.

Referred to the Finance Committee.

- SB 156. By Senators Tate of the 38th, Fort of the 39th, Henson of the 41st, Butler of the 55th, Zamarripa of the 36th and others:

A BILL to be entitled an Act to amend Title 43 of the O.C.G.A., relating to professions and businesses, so as to create the Georgia Microbial Contamination Commission; to provide a short title; to provide definitions; to provide for members, meetings, rules and regulations, compensation, annual report, and budget unit; to provide for duties and powers of the commission; to require licensure of persons engaged in the microbial profession; to provide for the office of commissioner of the commission; to provide for a treasurer; to provide for the disposition of fees collected under chapter; to provide for inspections by the commissioner; to provide for injunctions; to provide for investigation of complaint; to provide for other matters relative to the foregoing; to repeal conflicting laws; and for other purposes.

Referred to the Health and Human Services Committee.

- SB 157. By Senators Weber of the 40th, Moody of the 56th, Shafer of the 48th, Adelman of the 42nd, Hill of the 32nd and others:

A BILL to be entitled an Act to amend Code Section 40-8-76.1 of the Official Code of Georgia Annotated, relating to the use of safety belts in passenger vehicles, so as to eliminate certain exceptions to the required use of safety

belts; to repeal conflicting laws; and for other purposes.

Referred to the Public Safety and Homeland Security Committee.

SB 158. By Senators Whitehead, Sr. of the 24th, Chapman of the 3rd, Grant of the 25th, Seabaugh of the 28th, Chance of the 16th and others:

A BILL to be entitled an Act to amend Title 50 of the Official Code of Georgia Annotated, relating to state government, so as to provide for the comprehensive revision of provisions regarding state property; to provide for consolidation and effective management of the rental of administrative space and the acquisition, use, and disposition of real property by the state and state authorities; to repeal Article 2 of Chapter 5 of Title 50 of the Official Code of Georgia Annotated, the "State Space Management Act of 1976"; to repeal Article 6 of Chapter 9 of Title 50 of the Official Code of Georgia Annotated, relating to inventory of state buildings; to amend Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial relations, so as to repeal certain provisions regarding the lease of property; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

Referred to the State Institutions and Property Committee.

SB 159. By Senators Mullis of the 53rd and Thomas of the 2nd:

A BILL to be entitled an Act to amend Code Section 40-6-315 of the Official Code of Georgia Annotated, relating to headgear and eye-protective devices for motorcycle riders, so as to provide an exception for persons who are 21 years of age or older, have taken certain education courses, and have certain experience in riding motorcycles; to provide an exception for passengers of a motorcycle who are 21 years of age or older; to provide for related matters; to repeal conflicting laws; and for other purposes.

Referred to the Public Safety and Homeland Security Committee.

SR 1. By Senators Thompson of the 5th, Weber of the 40th, Stoner of the 6th, Harp of the 29th and Zamarripa of the 36th:

A RESOLUTION proposing an amendment to the Constitution so as to provide that funds derived from motor fuel taxes may be appropriated for and grant made for all activities incident to providing and maintaining an adequate

system of public roads and bridges in this state and for any or all transportation purposes; to provide for submission of this amendment for ratification or rejection; and for other purposes.

Referred to the Appropriations Committee.

SR 111. By Senators Staton of the 18th, Shafer of the 48th, Williams of the 19th, Chance of the 16th, Douglas of the 17th and others:

A RESOLUTION to urge Congress to amend the federal CAN-SPAM Act to allow the states greater authority in attempting to curtail and to regulate the transmission and receipt of unwanted, unsolicited, and deceptive electronic mail; and for other purposes.

Referred to the Science and Technology Committee.

SR 116. By Senators Zamarripa of the 36th, Williams of the 19th and Tate of the 38th:

A RESOLUTION commending the Atlanta Belt Line project and urging the City of Atlanta and related parties to move forward with the Belt Line project; and for other purposes.

Referred to the Transportation Committee.

SR 120. By Senators Hudgens of the 47th, Cagle of the 49th, Mullis of the 53rd, Johnson of the 1st, Stephens of the 27th and others:

A RESOLUTION requesting that the congressional delegation of the State of Georgia work to pass social security personal retirement accounts; and for other purposes.

Referred to the Insurance and Labor Committee.

The following House legislation was read the first time and referred to committee:

HB 191. By Representatives O'Neal of the 146th and Williams of the 4th:

A BILL to be entitled an Act to amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to imposition, rate, computation, and exemptions regarding income taxes, so as to provide for adjustments to taxable net income with respect to certain direct or indirect interest expenses and costs and intangible expenses and costs; to provide for procedures, conditions, and limitations; to change the manner and method of allocating and

apportioning income with respect to corporations; to provide for powers, duties, and authority of the state revenue commissioner; to provide effective dates; to provide for applicability; to repeal conflicting laws; and for other purposes.

Referred to the Finance Committee.

The following committee reports were read by the Secretary:

Mr. President:

The Banking and Financial Institutions Committee has had under consideration the following legislation and has instructed me to report the same back to the Senate with the following recommendation:

SB 82            Do Pass by substitute

Respectfully submitted,  
Senator Hamrick of the 30th District, Chairman

Mr. President:

The Economic Development Committee has had under consideration the following legislation and has instructed me to report the same back to the Senate with the following recommendation:

SB 125           Do Pass

SB 133           Do Pass by substitute

Respectfully submitted,  
Senator Mullis of the 53rd District, Chairman

Mr. President:

The Education and Youth Committee has had under consideration the following legislation and has instructed me to report the same back to the Senate with the following recommendation:

SB 35            Do Pass by substitute

Respectfully submitted,  
Senator Moody of the 56th District, Chairman

Mr. President:

The Finance Committee has had under consideration the following legislation and has



instructed me to report the same back to the Senate with the following recommendation:

SR 34            Do Pass

Respectfully submitted,  
Senator Cagle of the 49th District, Chairman

Mr. President:

The Health and Human Services Committee has had under consideration the following legislation and has instructed me to report the same back to the Senate with the following recommendation:

SB 90            Do Pass by substitute  
SB 110          Do Pass as amended  
SR 78            Do Pass

Respectfully submitted,  
Senator Thomas of the 54th District, Chairman

Mr. President:

The Regulated Industries and Utilities Committee has had under consideration the following legislation and has instructed me to report the same back to the Senate with the following recommendation:

SB 124          Do Pass

Respectfully submitted,  
Senator Seabaugh of the 28th District, Chairman

Mr. President:

The State and Local Governmental Operations Committee has had under consideration the following legislation and has instructed me to report the same back to the Senate with the following recommendation:

HB 99            Do Pass  
SB 104          Do Pass  
SB 132          Do Pass

Respectfully submitted,  
Senator Wiles of the 37th District, Chairman

The following legislation was read the second time:

SB 92            SR 80

The roll was called and the following Senators answered to their names:

Adelman	Hill,Jack	Shafer,D
Balfour	Hill,Judson	Smith
Brown	Hooks	Starr
Bulloch	Hudgens	Staton
Butler	Johnson	Stephens
Cagle	Jones	Stoner
Carter	Kemp	Tate
Chance	Me V Bremen	Thomas,D
Chapman	Miles	Thomas,R
Douglas	Moody	Thompson,C
Fort	Mullis	Thompson,S
Goggans	Pearson	Tolleson
Golden	Powell	Unterman
Grant	Reed	Walker
Hamrick	Rogers	Weber
Harbison	Schaefer	Whitehead
Harp	Seabaugh	Wiles
Heath	Seay	Williams
Henson		

Not answering was Senator Zamarripa.

The members pledged allegiance to the flag.

Senator Butler of the 55th introduced the chaplain of the day, Pastor Charles Gardner of Atlanta, Georgia, who offered scripture reading and prayer.

The following resolutions were read and adopted:

SR 110. By Senator Thomas of the 2nd:

A RESOLUTION recognizing and commending Ms. Esther Perkins-Frazier for her service to her church and community; and for other purposes.

SR 112. By Senator Harbison of the 15th:

A RESOLUTION commending AFLAC Incorporated and declaring November 17, 2005, "AFLAC Day" in the State of Georgia; and for other purposes.

SR 113. By Senator Shafer of the 48th:

A RESOLUTION commending the Duluth Middle School Academic Bowl Team; and for other purposes.

SR 114. By Senator Shafer of the 48th:

A RESOLUTION commending and expressing gratitude to Action Ministries, Inc.; and for other purposes.

SR 115. By Senators Starr of the 44th, Hooks of the 14th and Walker of the 22nd:

A RESOLUTION expressing regret at the passing of Frank H. Edwards; and for other purposes.

SR 117. By Senator Schaefer of the 50th:

A RESOLUTION recognizing and commending Leadership Franklin; and for other purposes.

SR 118. By Senators Hamrick of the 30th, Bulloch of the 11th and Cagle of the 49th:

A RESOLUTION recognizing and commending the extraordinary career of George Emory Reagan on the occasion of his retirement; and for other purposes.

SR 119. By Senators Douglas of the 17th, Balfour of the 9th, Johnson of the 1st and Stephens of the 27th:

A RESOLUTION recognizing and commending Operation Sandbox GA, its co-founders, Julie and Virginia Pearson, and the members of Park Place Baptist Church in Snellville, Georgia; and for other purposes.

HR 191. By Representatives Orrock of the 58th, Willard of the 49th, Cooper of the 41st, Wilkinson of the 52nd, Oliver of the 83rd and others:

A RESOLUTION recognizing Health Care Decisions Week in Georgia; and for other purposes.

Senator Hudgens of the 47th asked unanimous consent that Senator Unterman of the 45th be excused. The consent was granted, and Senator Unterman was excused.

The following local, uncontested legislation, favorably reported by the committee as listed on the Local Consent Calendar, was put upon its passage:

### **SENATE LOCAL CONSENT CALENDAR**

Wednesday, February 9, 2005  
Fifteenth Legislative Day

(The names listed are the Senators whose districts are affected by the legislation.)

SB 104                    Stoner of the 6th  
                             Rogers of the 21st  
                             Hill of the 32nd  
                             Thompson of the 33rd  
                             Wiles of the 37th  
                             **COBB COUNTY**

A BILL to be entitled an Act to amend an Act creating the State Court of Cobb County, approved March 26, 1964 (Ga. L. 1964, p. 3211), as amended, particularly by an Act approved May 30, 2003 (Ga. L. 2003, p. 3693), so as to change the compensation of the solicitor-general; to change the provisions relating to the compensation of assistant solicitors; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

SB 132                    Williams of the 19th  
                             **WAYNE COUNTY**

A BILL to be entitled an Act to amend an Act providing for the Board of Education of Wayne County, approved January 28, 1994 (Ga. L. 1994, p. 3512), as amended, so as to provide for the nonpartisan election of members of that board; to provide for submission of this Act under the federal Voting Rights Act of 1965, as amended; to provide an effective date; to repeal conflicting laws; and for other purposes

HB 99                    Harp of the 29th  
                             **CITY OF HAMILTON**

A BILL to be entitled an Act to amend an Act creating a new charter for the City of Hamilton, approved March 10, 1964 (Ga. L. 1964, p. 2601), as amended, so as to provide for the filling of vacancies in the

offices of the mayor or councilmen; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

The report of the committee, which was favorable to the passage of the local legislation as reported, was agreed to.

On the passage of the legislation, a roll call was taken, and the vote was as follows:

Y Adelman	Y Hill,Jack	Y Smith
Y Balfour	Y Hill,Judson	Y Starr
Y Brown	Y Hooks	Y Staton
Bulloch	Y Hudgens	Y Stephens
Y Butler	Y Johnson	Y Stoner
Y Cagle	Jones	Y Tate
Y Carter	Y Kemp	Y Thomas,D
Y Chance	Y Me V Bremen	Y Thomas,R
Y Chapman	Y Miles	Y Thompson,C
Douglas	Y Moody	Y Thompson,S
Y Fort	Y Mullis	Y Tolleson
Y Goggans	Y Pearson	E Unterman
Y Golden	Y Powell	Walker
Y Grant	Y Reed	Y Weber
Y Hamrick	Y Rogers	Y Whitehead
Harbison	Y Schaefer	Y Wiles
Y Harp	Y Seabaugh	Williams
Y Heath	Y Seay	Zamarripa
Henson	Y Shafer,D	

On the passage of the local legislation, the yeas were 47, nays 0.

The legislation on the Local Consent Calendar, having received the requisite constitutional majority, was passed.

The following communications were received by the Secretary:

Legislative Services Committee  
 Office of Legislative Counsel  
 316 State Capitol  
 Atlanta, GA 30334  
 (404) 656-5000  
 February 1, 2005

Honorable Mark Taylor  
Lieutenant Governor  
240 State Capitol  
Atlanta, Georgia 30334

Dear Lieutenant Governor Taylor:

Pursuant to your call for a caucus under the provisions of O.C.G.A. Section 32-2-20, a caucus was held on January 25, 2005, in the Senate Chamber of the State Capitol Building. At that caucus, Honorable Raybon Anderson was elected as a member of the State Transportation Board from the 12th Congressional District to fill the current vacancy and to serve the remainder of the term which expires April 15, 2008.

Respectfully submitted,

/s/ Eric Johnson  
HONORABLE ERIC JOHNSON  
SENATOR, DISTRICT 1  
CHAIRMAN

/s/ Sistie Hudson  
HONORABLE SISTIE HUDSON  
REPRESENTATIVE, DISTRICT 124  
SECRETARY

Legislative Services Committee  
Office of Legislative Counsel  
316 State Capitol  
Atlanta, GA 30334  
(404) 656-5000

TO: HONORABLE CATHY COX  
SECRETARY OF STATE

This is to certify that Honorable Raybon Anderson has been elected, pursuant to the provisions of O.C.G.A. Section 32-2-20, as a member of the State Transportation Board from the 12th Congressional District to fill the current vacancy and serve the remainder of the term, which expires April 15, 2008.

This 3rd day of February, 2005.

/s/ Mark Taylor  
PRESIDENT OF THE SENATE

/s/ Glenn Richardson  
SPEAKER, HOUSE OF REPRESENTATIVES

Legislative Services Committee  
Office of Legislative Counsel  
316 State Capitol  
Atlanta, GA 30334  
(404) 656-5000  
February 1, 2005

Honorable Mark Taylor  
Lieutenant Governor  
240 State Capitol  
Atlanta, Georgia 30334

Dear Lieutenant Governor Taylor:

Pursuant to your call for a caucus under the provisions of O.C.G.A. Section 32-2-20, a caucus was held on January 25, 2005, in the Senate Chamber of the State Capitol Building. At that caucus, Honorable Johnny Gresham was elected as a member of the State Transportation Board from the 6th Congressional District to serve a term beginning April 16, 2005, and expiring April 15, 2010.

Respectfully submitted,

/s/ Bill Stephens  
HONORABLE BILL STEPHENS  
SENATOR, DISTRICT 27  
CHAIRMAN

/s/ Matt Dollar  
REPRESENTATIVE, DISTRICT 45  
SECRETARY

Legislative Services Committee  
Office of Legislative Counsel  
316 State Capitol  
Atlanta, GA 30334  
(404) 656-5000

TO: HONORABLE CATHY COX  
SECRETARY OF STATE

This is to certify that Honorable Johnny Gresham has been elected, pursuant to the provisions of O.C.G.A. Section 32-2-20, as a member of the State Transportation Board from the 6th Congressional District for a term of five years and until his successor is elected and qualified, such term beginning April 16, 2005, and expiring April 15, 2010.

This 3rd day of February, 2005.

/s/ Mark Taylor  
PRESIDENT OF THE SENATE

/s/ Glenn Richardson  
SPEAKER, HOUSE OF REPRESENTATIVES

Legislative Services Committee  
Office of Legislative Counsel  
316 State Capitol  
Atlanta, GA 30334  
(404) 656-5000  
February 1, 2005

Honorable Mark Taylor  
Lieutenant Governor  
240 State Capitol  
Atlanta, Georgia 30334

Dear Lieutenant Governor Taylor:

Pursuant to your call for a caucus under the provisions of O.C.G.A. Section 32-2-20, a caucus was held on January 25, 2005, in the Senate Chamber of the State Capitol Building. At that caucus, Honorable Roy Herrington was elected as a member of the State Transportation Board from the 1st Congressional District to serve a term beginning April 16, 2005, and expiring April 15, 2005.

Respectfully submitted,

/s/ Eric Johnson  
HONORABLE ERIC JOHNSON  
SENATOR, DISTRICT 1  
CHAIRMAN



/s/ Tommie Williams  
HONORABLE TOMMIE WILLIAMS  
SENATOR, DISTRICT 19  
SECRETARY

Legislative Services Committee  
Office of Legislative Counsel  
316 State Capitol  
Atlanta, GA 30334  
(404) 656-5000

TO: HONORABLE CATHY COX  
SECRETARY OF STATE

This is to certify that Honorable Roy Herrington has been elected, pursuant to the provisions of O.C.G.A. Section 32-2-20, as a member of the State Transportation Board from the 1st Congressional District for a term of five years and until his successor is elected and qualified, such term beginning April 16, 2005, and expiring April 15, 2010.

This 3rd day of February, 2005.

/s/ Mark Taylor  
PRESIDENT OF THE SENATE

/s/ Glenn Richardson  
SPEAKER, HOUSE OF REPRESENTATIVES

Senator Stephens of the 27th moved that upon the dissolution of the Joint Session the Senate stand adjourned until 10:00 a.m. Thursday, February 10, 2005, and the President announced the motion prevailed at 10:49 a.m.

The hour for convening the Joint Session of the Senate and House having arrived, the President, accompanied by the Secretary and Senators, proceeded to the Hall of the House of Representatives, and the Joint Session, called for the purpose of hearing a message by Honorable Norman Fletcher, Chief Justice of the Supreme Court, was called to order by the Lieutenant Governor. HR 165 authorizing the Joint Session of the Senate and House was read by the Clerk of the House.

Honorable Norman Fletcher, Chief Justice of the Supreme Court, addressed the Joint Session of the Senate and the House of Representatives as follows:

Lt. Governor Taylor, Speaker Richardson, President Pro Tem Johnson, friends of the legislative branch and executive branch, fellow members of the judicial branch, ladies and gentlemen.

On behalf of the judicial branch, I thank you for the invitation to deliver the State of the Judiciary Address to this joint session of the General Assembly. By inviting the chief justice to address you, just as you invite the governor to give the State of the State Address, you show your interest and concern for the well being of the judicial branch. For this we are most appreciative.

This is my fourth and final opportunity to deliver this address as my term as chief justice expires in June of this year. During my term I have enjoyed getting to know you much better and working closely with you in the creation of the new statewide public defender system, a system which assures that justice will flow down like rivers of water, for not just the wealthy, but for all our people.

In The Grapes of Wrath, John Steinbeck, wrote, "It is the nature of man to rise to greatness, if greatness is expected of him." There can be no doubt, greatness is expected of all persons entrusted with leadership positions. The 72 percent of you who were here the last two sessions rose to greatness and, having met most all of your new members, I am confident that all of you will rise to greatness over the next few years as you continue to support the delivery of justice in this state and improve the quality of life for all of our citizens.

#### PUBLIC DEFENDERS

The new statewide public defender system, which you so wisely created during the 2003 session and funded in the FY 2005 budget, is off to a remarkable start. It is being favorably recognized nationally, with many states desiring to emulate our system. You should take great pride and find much satisfaction knowing you so ably fulfilled your constitutional and moral obligations. History will long record that this great legislative body did the right thing at the right time.

The Public Defender Standards Council consists of 11 members who were appointed by the Governor, Lt. Governor, Speaker, Chief Justice, and Chief Judge of the Court of Appeals. For the past 19 months these dedicated Georgians have met often and worked tirelessly. They have sacrificed their personal time and money to insure that the new system is implemented effectively and on schedule. And they have succeeded, for in less than 11 months the staff organized circuit public defender offices throughout the state.

The Council has received much cooperation and acceptance from county governments and local judges. This is evidenced by the strong support of the public defender office which opened last July as a pilot project in the Cordele Circuit, and by the fact that local governments in more than 30 circuits have contracted with the Council to provide

services in their courts which are not covered by the legislation.

The good news is 42 circuit public defender offices opened January 1st and are operating full speed at this moment. In last Sunday's AJC Bill Rankin's article headlined, "Defender System Gets Early Praise," reported favorably on its successful beginning and the welcomed relief it is providing. We anticipate 2 more circuit offices will be in operation within 60 days. As both state and local governments observe the success of the new system, I firmly believe the other 5 circuits will opt into the system within a few years.

All I ask of you at this time is to continue your commitment to properly fund the system you so wisely created and that you not tinker with the system or make any additional exceptions to its full coverage; such as that proposed by HB 366. If exceptions become the rule, the system will be destroyed and then the courts will have to fix it. None of us want that. I earnestly request your forbearance. Let the new system operate without interference for the next three years. If shortcomings are discovered during that time, the legislation can then be fine tuned.

#### JUDICIAL COUNCIL/AOC

I'm extremely pleased to report that the Judicial Council has had an outstanding year as representatives of all levels of our courts worked in harmony on many projects designed to improve our judicial system. This harmony has made my last year as Chair of the Council a delightful one, and I am certain it also pleases you to know that your court leaders are working together so well as they seek innovative ways to best fulfill our primary role, to deliver timely, quality justice in an efficient manner.

I am also happy to report that the Administrative Office of the Courts is fulfilling its role and duties better than ever before in its 32 year existence. Throughout this year the leaders of our various levels of courts have expressed their gratitude for the many support services provided them by the AOC staff.

I will mention just a few of those vital services. First, the AOC is assisting the start up of the public defender system by providing payroll services to the Standards Council and circuit Public Defenders' employees and financial services to a number of the local circuit defender offices. The fiscal procedures and business practices now in place are working smoothly.

Next, the AOC established training programs in "sound business practices" for court personnel, judges, clerks, police chiefs, probation officers and others who collect and distribute mandated fines associated with criminal convictions or dispositions of civil cases. The staff developed program, "Court Fees: The Basics," has been presented numerous times around the state. The demand for such training has increased steadily and these and similar efforts will continue in the years to come.

The AOC continues to work diligently to provide the highest quality informational technology services possible to the Georgia courts. Case management software, supplied to local courts through the AOC, is integral to successful processing and tracking of cases. This year, for the first time, our case management software can be modified and updated from centrally located servers that communicate to local courts over the internet.

And, over the past two years, the AOC, through the Commission on Interpreters, has made a concerted effort to train, test and license qualified foreign language interpreters to assist non English speaking defendants in court proceedings. We now have 255 registered court interpreters and 38 certified court interpreters. As the need for foreign language interpreters continues to grow, the Commission will insure that highly qualified court interpreter services are available.

#### PROBLEM SOLVING/SPECIALTY COURTS

Problem solving courts have made great strides in this country over the past decade, and we have also made considerable progress in Georgia. The Fulton County Family Court has proved to be very effective. Improving the delivery of services relating to families has been a priority of the Judicial Council, and the Child Placement Project, under the leadership of Justice Hines, has met with great success.

Thirty-four drug court programs are in operation within various courts in 23 judicial circuits around the state. Their successes are most encouraging. These courts are holding participants accountable, saving the state and local governments money, and are changing lives and reuniting families. In 2004 we created a Judicial Council Standing Committee on Drug Courts, chaired by Judge George Kreeger of Cobb Superior Court, to develop policies to insure that our Georgia drug courts remain efficient and effective.

And last, but certainly not least, at the request of the business community and through the diligent efforts of the state bar, we are giving serious consideration to a request for creation of a business court project within Fulton Superior Court.

#### COURT TECHNOLOGY

For a number of years the judicial branch has struggled to improve the availability and proper use of technology in our courts. We recognized the necessity to remedy organizational deficiencies in addressing technology needs. To this end we have undertaken two initiatives. First, the Georgia Courts Automation Commission has adopted sound business strategies which it is adhering to in its decision-making process. This sound business approach has resulted in clear guidelines for project approval, contracts and financial conduct. Additionally, the Commission has developed a strategic plan by which all future technology requests will be measured.

The second and most important initiative is the work of the Supreme Court Committee on Technology which was created in December 2003. As I reported last year, this

Committee is composed of 28 members, representing all components of the judicial system and a broad spectrum of interests, including both rural and metropolitan. Members include representatives from the various courts, clerks of court, state bar, Georgia Courts Automation Commission, Georgia Public Defenders Standards Council, Prosecuting Attorneys' Council, court administrators, and court reporters as well as advisory representatives from the offices of the Governor, Lt. Governor, legislative budget office, Superior Court Clerks' Cooperative Authority, and the Georgia Technology Authority. The Committee has worked diligently for a year to complete its study and fulfill its mission of making recommendations on governance structure, standards and implementation. We have high expectations of the Committee's report which is expected this month. We hope it will have as great a positive impact on court technology as the work of our Commission on Indigent Defense had on our criminal justice system.

#### JUDICIAL INDEPENDENCE, ELECTIONS AND BUDGETS

The judiciary is in the justice business, and justice is not, nor should it ever be, a matter of politics. It is a right guaranteed by the United States and Georgia Constitutions. Learned Hand, one of the greatest American jurists of all time, hit the nail on the head when he said: "If we are to keep our democracy, there must be one commandment - - thou shall not ration justice."

Our Constitutions created the judiciary as a co-equal branch of government. This separation of powers has played a major role in preventing the rationing of justice in this country. But we must always be on guard to assure that nothing impinges on the ability of the judiciary to make those hard decisions, sometimes unpopular decisions, that keep our democracy alive.

While many things affect our courts, I am convinced that the three with the greatest impact on the delivery of justice are judicial independence, judicial elections and judicial budgets, which are all closely interrelated. And we must see that these influences are molded in such manner as best assures that the rule of law prevails and that equal justice for all will be administered in our courts.

By judicial independence, I am talking about decisional independence; such independence as is necessary to enable judges to impartially resolve cases before them, without fear or favor, based on the law and the facts of the particular case. That's what our citizens want and our judicial system must provide them nothing less. Georgia judges are reminded of this every time they take their oath of office, which requires that justice be handed down without respect to person and that equal rights be assured to the poor and rich alike.

To assure this fairness we must see that judges are insulated from attempts to influence their current decisions or to affect future decisions by inappropriately punishing them,

whether by the budgetary process, legislation or otherwise. Because you believe in fairness, impartiality and doing the right thing, I am confident you will continue to provide the insulation necessary to assure that all citizens receive equal justice under the law in the courts of this state.

I turn now to elections. Only 4 states, Alabama, Louisiana, Texas and West Virginia, still select all their trial judges and appellate judges, both initially and for reelection, in contested partisan elections. Following initial appointments, ten other states have partisan elections for either all or part of their judges. Over the past 20 years those states with partisan judicial elections have continued to spend larger and larger sums on judicial races filled with degrading and misleading ads, making them appear, and perhaps rightfully so, to be just as political as other elections. As would be expected, this has caused many citizens to conclude that these judges will not impartially resolve cases before them, that they are obligated to and will treat more favorably those who supported them financially or otherwise. Therefore, in those states there is far less trust and confidence in their courts. No doubt, this is what led Texas Chief Justice Tom Phillips in his 2003 State of the Judiciary Address to state: "Most other states have concluded that the goals of an independent, qualified and accountable judiciary can better be achieved by treating judicial elections differently."

In 1983 we in Georgia decided to treat them differently by providing for non partisan elections of superior court, state court, and appellate court judges. This system has served us well, and for many years the same was true in the 19 other states with non partisan judicial elections. However, in a few of these states in recent years the political parties have been taking steps which are making their judicial elections appear more and more partisan, and, in a couple, they have effectively converted them into partisan elections, with that same resulting loss of trust and confidence that I mentioned a few moments ago. In 2004 we saw some evidence of this in Georgia judicial elections and we also experienced far more money being spent on judicial races than ever before. I implore you to treat judicial races differently, to allow non partisan races to truly be non partisan, so that our citizens can and will continue to have trust and confidence in our courts.

With that said, for a number of years our probate judges, magistrate judges and district attorneys have sought non partisan elections. I know that our magistrate and probate judges will once more seek such changes in the law as will allow them to be elected on a non partisan basis, and I urge you to favorably respond to their requests.

During the past year I have observed that both the press and others have misconceived many things about the judicial budget. Part of this can be attributed to be fact that there is little knowledge of the process through which that item labeled "judicial budget" comes into being. So I want to take this opportunity to address these issues, particularly the FY 2006 budget requests. It is not my intention to offend anyone; rather, my friends,

I hope to provide information which will assist you as you carry out your duty to consider budget requests and fund the judicial branch as adequately as possible.

As you know, the judicial branch is not a state agency. It is a co-equal branch of government that depends on you, the legislative branch, for the resources necessary for operation. A thorough review of the judicial branch appropriations should help to clear up some of the misunderstanding. It will also prove that the judicial branch did not cause Georgia's budget crisis and that it's FY 2006 request is not seeking an unreasonable increase.

I turn first to the process. Georgia does not have a unified court system. That is why the applicable statute requires judicial budget requests to be prepared by the chief justice of the Supreme Court, the chief judge of the Court of Appeals and such other judicial officers as are appropriate, and, when it is compiled, it is to be submitted to the director of the budget for inclusion in the governor's overall budget request. This big book entitled, "Judicial Branch FY 2006 Budget Requests" is a compilation of each such judicial officer's or organization's requests. I only have power over the Supreme Court request. The chief judge of the Court of Appeals prepares its request, the superior court judges their request, the district attorneys their request, juvenile judges their request, and so on and on. As you can see, while the judicial budget request is bound in one book, it is composed of the separate request of 9 levels of courts or court related entities plus the request of the Judicial Council which is made on behalf of 15 other court related entities or purposes.

In Georgia, traditionally, two major components of the judicial budget are requests from groups which perform executive branch functions, not judicial functions. They are (1) the district attorneys, whose duty essentially is to represent the state in court proceedings, and (2) the Public Defender Standards Council, which has the duty to provide attorneys to defend those accused of crime who are indigent. I am not suggesting that either of these groups be changed from the judicial budget to the executive branch budget, as that is a policy decision for the legislative and executive branches. I bring this to your attention, however, in order that you and the public can better understand that a major part of what is labeled "Judicial Branch Budget" is not for judicial branch functions.

The FY 2005 budget approved last year allocated to the judicial branch only .00925 percent of total state appropriations. However, excluding that portion provided for district attorneys and public defenders, plus certain worthy flow-through items logically placed in the judicial budget but not directly related to the judiciary, appropriations for judicial branch functions amounted to .0051 percent of the state budget. And that is what constitutes the true judicial branch budget.

Of the FY 2005 supplemental budget requests, 43 percent is to fund the June 30th payroll, something you are facing with the June 30th payrolls of all state agencies, and 50

percent is to fund the public defender system for the remainder of the fiscal year, which, during the last session, you assured would be forthcoming in the supplemental budget.

I turn now to the FY 2006 budget. The request is not a 29 percent increase over the 2005 budget, as reported by the press on December 6th and again on January 12th. In order to accurately determine such increase, it is necessary to first establish the final base line of the FY 2005 budget, which, of necessity, must include the FY 2005 supplemental budget. And, because most, if not all, of the judicial supplemental budget requests previously mentioned were expected and are reasonably necessary, I firmly believe you will approve them. If you do, comparing the final FY 2005 budget with the FY 2006 request, the increase is 16 percent. But that does not accurately reflect the increase, for only when the true judicial budget request is determined can the increase be correctly calculated.

I have no doubt that the 2006 requests of the District Attorneys and the Standards Council are reasonable and based on real needs. But, together they total slightly more than 50 percent of the FY 2006 judicial budget request, and as I previously pointed out, they perform executive branch functions. Therefore, when their requests are excluded together with the flow-throughs, the increase in the true judicial budget request is slightly less than 4.9 percent, and, if fully funded, would amount to about .0054 percent of the FY 2006 state proposed budget of 17.4 billion dollars.

Just as our population continues to rapidly increase, so have our court filings. In calendar year 1999 there were a total of 1,757,863 cases filed in our superior, state, juvenile, probate and magistrate courts. In calendar year 2003, this increased to 2,017,901 case filings. I ask you, can anyone deny that handling such a load with far less than 1 percent of the state budget is quite an accomplishment.

Even though it receives an extremely small part of the total state appropriations, the judicial branch acknowledges its obligation to be a good steward of the public's funds and that our courts should operate as efficiently as possible; mindful, however, that courts are efficient only so long as they can provide timely, quality justice, fairly and impartially, and that no system that rations justice is efficient. So, if there are concerns involving financial accountability from any level of court or any entity under the judicial budget, I feel certain that the leadership of any such level of court or entity, as good public servants, will be amenable to finding a way to address any reasonable concerns. So long as the purpose behind such concerns or inquiries is not an attempt to control the judicial branch or to interfere in any way with decisional independence in our courts, I will fully encourage and support such cooperation.

I would be remiss if I did not mention one last matter affecting the judicial branch and its budget. There is a dire need for additional superior court judges in various parts of our great state. I feel certain that many of you are fully aware of this fact. No new superior court judges have been approved and funded by this body in the past several years.



Using the established valid criteria, this year the Judicial Council approved 10 requests for new judgeships. On behalf of the Judicial Council and the Council of Superior Court Judges, I request that you favorably receive the recommendations and requests. Additionally, our Court of Appeals continues to be in dire need of additional judges and office space.

I close on this more personal note. I have been richly blessed with wonderful family and friends, strong faith, good health and the great privilege of serving on your Supreme Court for 15 years plus a few weeks. I am particularly grateful to Governor Joe Frank Harris who made possible my service on the Court. And I deeply treasure the close friendships made with so many members of the General Assembly over these years.

Provided nothing unexpected occurs between now and June 30th, I will retire from the Court on that date. My heart and mind assure me that creation of the public defender system was a good, right and just thing. Because the system is alive and well, I am filled with joy, a joy that will be with me for the remainder of my life.

And, when I leave, it will be with full confidence that Governor Perdue will choose an excellent successor, one who loves the law and believes in fairness and equal justice for all God's children, just as much as I do. In the meantime, I look forward to working with you as we seek to remedy wrongs and improve both our justice system and the quality of life of the people of Georgia. I wish you well in this history making session.

Senator Stephens of the 27th moved that the Joint Session be hereby dissolved.

The motion prevailed, and the Lieutenant Governor announced the Joint Session dissolved.

Pursuant to the provisions of a previously adopted motion, the Senate stood adjourned until 10:00 a.m. Thursday, February 10, 2005.